

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4620 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHAGUBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RV DESAI FOR MR MUKUND M DESAI for Petitioner
MR L.R.PUJARI ASSTT. GOVT. PLEADER
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. The petitioner has challenged the order dated 9th March 1988 passed by the District Education Officer refusing approval to the appointment of Shri Solanki Manilal who according to the petitioner was selected by

the selection committee for appointment as additional teacher.

2. The petitioner's case is that it is running a school at Saijpur and had applied for permission to open a new class of VIIIth Standard, which permission was granted on 6th January 1988 on several conditions, including the condition that the appointment of the additional teacher will be made from amongst the backward class or schedule caste candidates. According to the petitioner, the petitioner applied for a No Objection Certificate on 19th January 1988 for appointing additional teacher and the permission was granted on 25th January 1988 on the condition that reservation of the reserved castes should be maintained. Thereafter, an advertisement was issued on 31st January 1988, a copy of which is at Annexure 'C' to the petition. According to the petitioner, interviews were held on 27th February 1988 by a committee as per the provisions of the Gujarat Secondary Education Act and out of nine candidates who were interviewed, one Shri Solanki Manilal Jivanlal was unanimously selected and appointed with effect from 1st March 1988 as Assistant teacher. Thereafter, on 29th February 1988, the petitioner wrote to the District Education Officer for approval of the said appointment. On 9th March 1988, by the impugned order, the District Education Officer informed the petitioner that the approval could not be granted in view of the directions given by the Director of Higher Education, pursuant to which the No Objection Certificate was cancelled.

3. It was contended on behalf of the petitioner that once the No Objection Certificate has been granted, it could not have been cancelled without hearing the petitioner. It was submitted that the appointment of the Assistant Teacher was made on the basis of the approval which was already granted, and therefore, the impugned order is arbitrary and illegal.

4. It appears from the record that when the petition was admitted on 12th October 1988, interim relief was refused, and therefore, the appointment of Shri Solanki could not have been continued since the impugned order dated 9th March 1988 continued to operate. It appears from the impugned order dated 9th March 1988 that there is a reference therein to the letter dated 23rd February 1988 in context of the No Objection Certificate. That letter is not produced on record. In the body of the order, there is a reference to the instructions received from the Director for cancelling the No Objection Certificate and for not approving such appointment.

Since the N.O.C. was cancelled, the approval to appointment of Assistant Teacher could not be granted. The N.O.C. was granted on 19th January 1988 for starting one more class and when that N.O.C. was withdrawn, there was no question of starting one more class from the ensuing academic term. The petitioner not having challenged the cancellation of No Objection Certificate passed by the Director, cannot challenge the impugned order dated 9th March 1988 by which the petitioner's request for approving the appointment of Shri Solanki Manilal was refused. The petitioner has no legal right to get such appointment approved. The candidate Solanki Manilal is also not impleaded as a party in this petition, which indicates that since the interim relief was not granted, he no more remained in picture.

There is therefore no substance in this petition.
Rule is discharged with no orders as to costs.

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